IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12th DAY OF JANUARY, 2015

PRESENT

THE HON' BLE MR. JUSTICE N.KUMAR

AND

THE HON' BLE MR. JUSTICE B. VEERAPPA

INCOME TAX APPEAL No. 10/2009

BETWEEN:

1. The Commissioner of Income Tax,
   284/1, Park View Building,
   4th Main, P.J. Extension,
   Davangere-577 002.

2. The Asst. Commissioner of Income Tax,
   Circle-1,
   Davangere ... APPELLANTS

(BY SRI K V ARAVIND, ADVOCATE)

AND:

M/s. Shamanur Kallappa & Sons,
No. 22/1-2, Chowkipet,
Davangere. ... RESPONDENT

(BY SRI S. PARTHASARATHI, ADVOCATE)

...

This ITA is filed under Section 260-A of the Income Tax Act, 1961 arising out of Order dated 29.08.2008 passed in ITA No. 1288/BNG/2007, for the

assessment year 2003-04 praying to formulate the substantial questions of law stated therein and to allow the appeal and set aside the order passed by the ITAT Bangalore Bench 'A' in ITA No.1288/BNG/2007, dated 29.08.2008.

This Income Tax Appeal coming on for Hearing this day, N. Kumar J., delivered the following:

JUDGMENT

The assessee is a partnership firm carrying on the business of trading in Sugar, Pulses and export of Rice. For the assessment year 2003-04, the assessee filed return of income declaring total income of Rs.2,20,55,450/- after claiming deduction of Rs.80,95,064/- under Section 80HHC of the Income Tax Act, 1961 (for short hereinafter referred to as 'the Act').

2. It is not in dispute that the assessee exported rice to Pnomphenh, Cambodia through State Trading Corporation of India Ltd., (for short hereinafter referred to the 'STC'), Jalandhar as a supporting manufacturer and therefore, they claimed deduction under Section 80 HHC of the Act. The assessee produced a letter dated

28.11.2003 from the STC to the effect that STC had not claimed any export benefit on the said exports and that the said exports are under protocol exports i.e. Government of India to Government Aid Programme and that the export consideration was received in Indian rupees from the Ministry of External Affairs. A certificate of disclaimer from STC in the prescribed Form 10CCAB and the bill of lading was also filed before the Assessing Officer.

3. The Assessing Officer disallowed the said claim on the ground that the STC had declared loss. In other words, they had not earned any profit out of such exports. Secondly on the ground that deduction under Section 80HHC of the Act is permissible only when the realization is in foreign exchange. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals), who confirmed

the order of the Assessing Authority against which the assessee preferred an appeal to the Tribunal.

4. The Tribunal on consideration of various provisions of law as well as Circulars held that under the scheme, the supporting manufacturer gets an independent right to claim deduction once he gets a declaration certificate in his favour from the Export House. What is to be seen is whether the benefit is claimed by both the Export House and the supporting manufacturer. If the export house is not claiming the benefit and the issue of certificate of disclaimer is in respect of export turn over, then the supporting manufacturer is entitled to the benefit. After referring to the circulars issued by the Central Board of Taxes dealing with the protocol exports, it was held that the supporting manufacturer has realized the consideration in Indian currency. Whether the Government of India has realized some foreign currency is not the criteria.

In view of the specific provision as contained in Section 80 HHC(1A) of the Act, the supporting manufacturer is entitled to the said benefit. Aggrieved by the said order, the revenue is in appeal.

5. The learned Counsel appearing for the revenue assailing the impugned order contended that when the export house has not earned any profit, the question of passing on the said benefit to the supporting manufacturer does not arise. Secondly, the Government of India gifted the rice to Cambodia and it is not a sale and no foreign exchange is realized and therefore, he submits Section 80HHC of the Act has no application to the facts of this case.

6. Per contra, learned Counsel for the assessee submitted that the present case falls under Section 80HHC(1A) of the Act and all the conditions prescribed therein are fulfilled as held by the Tribunal and

therefore, no case for interference is made out in the impugned order.

7. The appeal was admitted to consider the following substantial question of law:

> *"Whether the Tribunal was right in holding that the respondent-assessee was entitled to the benefit of the provisions of Section 80HHC(1A) of the Income Tax Act, 1961 even without actually exporting any food grains to a foreign country?"*

8. Section 80HHC of the Act provides for deduction in respect of profits return from export business. In the instant case, the role of the assessee is that of the supporting manufacturer and therefore, it is Section 80HHC(1A) of the Act that is attracted which reads as under:

> *"Section 80HHC(1A): Where the assessee, being a supporting manufacturer, has during the previous*

year, sold goods or merchandise to any Export House or Trading House in respect of which the Export House or Trading House has issued a certificate under the proviso to sub- section (1), there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of the assessee, a deduction to the extent of profits, referred to in sub-section (1B) derived by the assessee from the sale of goods or merchandise to the Export House or Trading House in respect of which the certificate has been issued by the Export House or Trading House."

9. To attract the said provision, the supporting manufacturer who sells the goods or merchandise to the export house or trading house, the export house and trading house has to issue a certificate under the proviso to Sub-section (1) of Section 80HHC of the Act. If these two conditions are fulfilled, then the supporting manufacturer is entitled to the deduction as

contemplated under Section 80HHC of the Act to an extent as mentioned in Section 80HHH(1B) of the Act. It is immaterial whether in the process, export house or trading house sells the goods to any foreign country or earns profit or realizes any foreign exchange. In order to attract Section 80HHC(1A) of the Act, after purchase of goods or merchandise from the supporting manufacturer, the said goods has to be exported out of India. Once such export is established, a certificate under the proviso to Sub-section (1) is issued by the export house or trading house and when they are not claiming benefit under Section 80HHC, the assessee would be entitled to the benefit of deduction as prescribed under Section 80HHC(1A) of the Act. Even the circulars relied on do support the case of the assessee.

10. In that view of the matter, we do not see any merit in this appeal. The substantial question of law is

answered in favour of the assessee and against the revenue.

11. Yet another substantial question of law which arises for consideration in this appeal is as under:

> *"Whether on the facts and in the circumstances of the case, the Tribunal was right in law and on facts in coming to the conclusion that the assessee has apparently complied with the statutory requirements provided in Section 80HHC(1A) for claiming the deduction, even though the requisite certificate duly signed by an accountant as defined in the Explanation below sub-section (2) of Section 288 of the Income Tax Act, 1961, has not been filed along with the R/I?"*

12. This Court had an occasion to consider this question in the case of INCOME TAX OFFICER –vs- MANDIRA D. VAKHARIA [2001 (250) ITR 432 (Karnataka)] where it has been held that even though

the requisite certificate duly signed by an accountant as defined in Sub-section (2) of Section 88 of the Act is not produced along with return. If it is produced even in the course of proceedings, it has to be taken note of and given the benefit. Therefore, the Tribunal was justified in granting the relief to the assessee relying upon the certificate produced in the course of the proceedings. Therefore, we do not see any merit in this contention also and the substantial question of law is answered in favour of the assessee and against the revenue.

No merit. The appeal is dismissed.

Sd/-
Judge

Sd/-
Judge

Nsu/-